

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

RICKEY D. CHRISTIAN,

Defendant/Petitioner.

CASE NO. CR-02-0056-EFS

[Case No.: 2:CV-14-0039-EFS]

**ORDER DENYING PETITIONER
CHRISTIAN'S SUCCESSIVE HABEAS
MOTION FOR FAILURE TO COMPLY WITH
28 U.S.C. § 2255(h)**

On February 3, 2014, Defendant Rickey D. Christian filed a document, which he asks the Court to construe as an initial 28 U.S.C. § 2255 motion for relief, or any alternative writ by which he could be afforded relief. Mr. Christian argues the Court erred at sentencing when it concluded he was an armed career criminal pursuant to 18 U.S.C. § 924(e) because his underlying burglary convictions do not serve as predicate armed career criminal offenses. Mr. Christian therefore maintains that the imposed sentence violates his Sixth Amendment right because the Court, not a jury, found facts that increased his sentence above the standard ten-year mandatory minimum sentence set forth by his charged offense: felon in possession of a firearm, 18 U.S.C. § 922(g)(1).

Because Mr. Christian submits that his sentence was "imposed in violation of the Constitution . . . [and] was in excess of the maximum authorized by law," this motion seeks relief under 28 U.S.C. § 2255.

1 Mr. Christian, however, has previously filed two § 2255 motions. Mr.
2 Christian's first § 2255 motion was filed on August 5, 2004. The
3 Court directed the United States to answer Mr. Christian's § 2255
4 motion, and after considering the parties' respective arguments, the
5 Court denied the first § 2255 motion.

6 On October 20, 2005, Mr. Christian filed a Rule 60(b) Motion to
7 Vacate October 14, 2004 Order Denying 28 U.S.C § 2255 Motion, ECF No.
8 85. The Court construed this motion as a second or successive § 2255
9 motion and denied it as Mr. Christian had not obtained certification
10 from the Ninth Circuit to file a second or successive § 2255 motion
11 pursuant to § 2255(h).

12 Subsection (h) states:

13 A second or successive motion must be certified as provided
14 in section 2244 by a panel of the appropriate court of
appeals to contain-

15 (1) newly discovered evidence that, if proven and viewed in
16 light of the evidence as a whole, would be sufficient
to establish by clear and convincing evidence that no
reasonable fact finder would have found the movant
guilty of the offense; or

17 (2) a new rule of constitutional law, made retroactive to
18 cases on collateral review by the Supreme Court, that
was previously unavailable.

19 28 U.S.C. § 2255(h); see also Rules Governing Section 2255
20 Proceedings, Rule 9 ("Before presenting a second or successive motion,
21 the moving party must obtain an order from the appropriate court of
22 appeals authorizing the district court to consider the motion . . .
23 ."). Because Mr. Christian has not provided documentation that he
24 obtained a § 2255(h) certificate from the Ninth Circuit before filing
25 this successive § 2255 motion, **IT IS HEREBY ORDERED:** Mr. Christian's
26 February 3, 2014 motion under § 2255, **ECF No. 90**, is **DENIED**.

1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
2 Order and provide copies to Mr. Christian and counsel.

3 **DATED** this 4th day of February 2014.

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5 s/ Edward F. Shea
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7 EDWARD F. SHEA
8 Senior United States District Judge
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